

Non-Fungible Token (NFT) in the Perspective of Intellectual Property Rights in Indonesia



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ABSTRACT: Non-Fungible Token (NFT) is a new thing in Indonesia, as something new it is full of problems regarding the legality of NFT in Indonesia. Furthermore, when it comes to Intellectual Property Rights (IPR), is NFT an IPR and does it receive legal protection? This problem will be discussed in this study, using normative juridical research methods. Based on the research results, it is known that NFT is a digital asset that can be authenticated in order to create digital ownership certificates where these certificates can be traded. This NFT can be protected as intellectual property rights because in fact NFTs are works of art that are encrypted into the blockchain network. Because NFTs are works of art, works of music, videos, game items, etc. that are encrypted into the blockchain network, NFTs are often associated with copyrights.

KEYWORDS: NFT; Intellectual Property Rights; Legal protection.

A. INTRODUCTION

Technology is developing very rapidly along with the times, especially in the field of digital trade because people also have more practical thoughts so they want things that are easier and more efficient. One of these practical thoughts inspired the birth of the Non-Fungible Token (NFT). NFT is an acronym for "Non-Fungible Token". Non-Fungible is an English word which means "to be of a nature or type that cannot be freely exchanged or replaced, in whole or in part, with another similar nature or type" and a Token is an entry in the blockchain, meaning it is an item that is included in digital databases ¹. NFTs are digital assets that can represent valuables with an exchange rate that cannot be replaced. The transaction will be recorded in a data on the blockchain. The data will contain information about the creator, price and ownership history of the NFT assets ². In short, NFTs can be said to be digital assets that represent real-world objects such as works of art, paintings, animations, photos, videos, drawings, music, signatures, tickets, and other creative works ³. While blockchain is a system that stores digital currency transaction data, this system is not managed by a third party such as a bank but can be managed by all internet computer users ⁴. Digital assets in the form of NFTs can be authenticated to create digital ownership certificates where these certificates can be traded. In addition, NFT is also a contract or known as a smart contract which gives creators of digital assets a discount (royalty) from the sale of tokens in the future ⁵.

Various countries in the world are facing technological advances related to new digital-based investment instruments, quickly in terms of adopting and categorizing a digital investment that occurs in cryptocurrencies, in terms of regulating new legal rules so that they can be used by people who will make investments. It can be seen in the states of the United States that previously categorized cryptocurrencies only as commodity assets as well as land, but over time they changed the rules by categorizing cryptocurrencies as legal tender. The connection of digital assets such as cryptocurrencies, NFTs, metaverse means that they need each other in carrying out various transactions that occur, just as in NFTs a place is needed that can accommodate a work that has meaning and value for collectors and buyers. Several places that can be used to get NFT, such as Opensea, Nifty, Gateway, Mintable

¹ 'NFT', *Dictionary.Com*, 2021 <<https://www.dictionary.com/e/tech-science/nft/>> [accessed 19 May 2023].

² CNBC Indonesia Team, 'Knowing What NFT Is Complete With How To Make & Sell It', *CNBC Indonesia*, 2022 <<https://www.cnbcindonesia.com/tech/20220104135501-37-304468/mengenal-apa-itu-nft-lengkap-by-making-selling-it>> [accessed 19 May 2023].

³ Apriliana Khomsa Kinanti Dewi Sulistianingsih, 'Copyright Non-Fungible Token (NFT) From a Legal Perspective on Intellectual Property Rights', *Kertha Bhayangkara*, 16.1 (2022), 182–203. p. 198.

⁴ HO Chi and Minh City, 'AEX Has Launched a National Plan and Established a \$100 Million Fund to Support Vietnam 's Blockchain Ecosystem', 2022.

⁵ Ida Ayu Sukihana Dewi, Ni Kadek Risma Setya Cahyani, 'Non-Fungible Token (NFT): Overview, Evaluation, Opportunities and Challenges', *Kertha Wicara Journal*, 11.4 (2021), 906–18 <<http://arxiv.org/abs/2105.07447>>.

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and Rarible. To be able to make buying and selling transactions in this technology, by using other crypto assets such as Bitcoin and Ethereum to be able to obtain a work ⁶.

The legal rules regarding *cryptocurrencies* ⁷ that have been determined by the Indonesian government are only commodity assets. The Indonesian government applies *cryptocurrency rules* only to commodity assets. Some of the rules regarding these cryptocurrencies include:

- a. Law No. 10 of 2011 concerning Amendments to Law no. 32 of 1997 concerning Commodity Futures Trading.
- b. Regulation of the Minister of Trade Number 99 of 2018 concerning General Policies for Organizing Cryptocurrency Asset Futures Trading (Crypto Asset).
- c. BAPPEBTI Regulation Number 3 of 2020.

Basically, the shape and type of NFT digital assets are not limited to digital artwork, but anything can be used as an NFT provided that it must be digital. However, digital artwork is the most used NFT today. This NFT can be said to be a digital asset that represents real-world objects such as works of art, paintings, animations, photos, videos, drawings, music, signatures, tickets, and other creative works. It is different from Cryptocurrencies because each cryptocurrency is considered the same as the others so that its tokens can be exchanged or are called fungible tokens.⁸

Even though it simplifies the creation and transaction process digitally, NFT still has problems, especially in the legal aspect. Because even though NFTs are digital assets based on *blockchain technology*, ⁹NFT buyers actually have limited rights over the digital assets they buy. When someone has purchased an NFT from the creator of the digital asset, they gain ownership in the sense of belonging to them. However, the NFT holder has no other rights to the work. This means that rights such as adaptation rights, reproductive rights and communication rights to the public are not owned by the NFT holder. This is because NFTs are digital certificates of ownership that represent the purchase of a digital asset and are traceable on *the blockchain*, not proof of ownership accompanied by a license under the Copyright Act. Thus, the NFT holder cannot sue other people in the event of copyright infringement (for example, reproducing an image in a painting without permission) unless the owner of the copyright of the digital asset gives the copyright of the digital asset to the NFT holder in writing. The problem that arises from digital assets is that because they are digital, they are very easy to share and reproduce, so that if the NFT Holder carries out buying and selling activities or distributes them to the general public without the permission of the digital asset copyright owner, then the NFT Holder may be subject to copyright infringement. There are several NFTs in which the NFT Holder has been granted the right to use copyrights on a limited basis, thus the NFT Buyer/NFT Holder cannot use the digital assets that have been purchased for commercial use.

For example, the case of a crypto artist with the name Twisted Vacancy who claims to get elements of his NFT inspiration from the internet. These elements are collected into a draft of his work team which can later be used by him and other team members. However, upon closer examination, it was found that Twisted Vacancy took elements belonging to an Indonesian named Kendra Ahimsa that were circulating on the internet and then used these elements and modified them with new designs. With a design derived from elements of Kendra Ahimsa, Twisted Vacancy manages to sell its NFT pieces at incredible prices. In the cases of Kendra Ahimsa and Twisted Vacancy, it can be seen that NFT has the potential to cause cyberspace crimes in the form of copyright infringement. This problem requires special legal rules that regulate NFT as an aspect of life in improving the community's economy. Reflecting on this case, it is felt that the ITE Law and Copyright Law are not capable enough to specifically regulate NFT issues in the scope of art, so this can be called a legal vacuum. The impact of the absence of this law is that there is legal and regulatory uncertainty in society and has the potential to create new problems in the NFT world ¹⁰. After seeing the description above, this research will examine how problematic the practice of NFT in Indonesia is from an Intellectual Property perspective. This research will specifically discuss about; What is the legal status of the Non-Fungible Token in Indonesian law? And what are the problems in the practice of Non-Fungible Tokens in Indonesia ?

B. RESEARCH METHODS

This research uses normative legal research methods which are carried out using statutory and conceptual approaches. The legal materials used in this study are primary legal materials and secondary legal materials which use doctrine from scholars as a supporting science derived from literature books and articles that can be used to support the author in analyzing the issues to be studied in this paper.

⁶ Globe Newswire and Blockchain Association, 'Vietnam Blockchain Association and Binance Officially Enter Strategic Cooperation', 2022 (2022), 6–9.

⁷ Vic Sehra, Avtar; Cohen, Richard; Arulchandran, 'On Cryptocurrencies, Digital Assets and Private Money', *Journal of Payments Strategy & Systems*, 12.1 (2018), 13–32 <<https://doi.org/doi.https://www.ingentaconnect.com>>.

⁸ Trung Nhat Quang, Nguyen Thu Hang, and Nguyen Duy Duong, 'How to Classify and Regulate Crypto in Vietnam?', 2022.

⁹ Sehra, Avtar; Cohen, Richard; Arulchandran.

¹⁰ M Najibur Rohman, 'Scientific Journal of Legal Sciences REVIEW OF NORMATIVE JURISDICTION ON CRYPTO CURRENCY REGULATION IN INDONESIA', *Jurnal Supremasi*, 11.2 (2021), 1–10.

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The technique for collecting data uses normative legal materials which are used to conduct literature studies on primary legal materials, secondary legal materials, tertiary legal materials and/or non-legal materials. The way to find legal material can be by reading, viewing and browsing through internet media which is then analyzed when the material has been collected using description techniques and evaluation techniques. The description technique is a technique in the form of a description of the circumstances that occur from legal and non-legal propositions. The purpose of this descriptive research is to make a systematic, factual and accurate description, picture or painting of the facts, properties and relationships between the phenomena being investigated. After the required data has been collected, data processing is carried out. Data processing includes data editing and data coding activities. Next is to do data analysis including by using content analysis (content analysis).

C. DISCUSSION

1. the legal status of the Non-Fungible Token in Indonesian law

Talking about NFT, it cannot be separated from electronic trading transactions. Electronic transactions themselves are called anonymous agreements because they are not specifically regulated in the Civil Code, but in separate regulations, namely the ITE Law and PP Number 82 of 2012 concerning the implementation of electronic systems and transactions. However, an anonymous agreement must comply with the provisions of the Civil Code regarding the legal terms of the agreement. As regulated in article 1319 of the Civil Code "All agreements, both those with a special name, and those that are not known by a certain name, are subject to the general regulations contained in this chapter and the previous chapter". Therefore, in essence, electronic transactions must comply with Article 1320 as a condition for the validity of the agreement, including: the agreement of those who bind themselves; the ability to make an engagement; a certain subject matter ; a cause which is not forbidden.¹¹

So if you meet the conditions above, an NFT transaction can become a tradable object. Regarding further transaction practices, it must comply with the provisions stipulated in the ITE Law and PP Number 82 of 2012.

The existence of NFTs is also related to intellectual property law based on article 25 of Law Number 11 of 2008 concerning Electronic Information and Transactions which states that "electronic information and/or electronic documents compiled into intellectual works, internet sites, and intellectual works that are in it is protected as an intellectual property right under the provisions of laws and regulations". So that this NFT can be protected as an intellectual property right because NFT is actually a work of art that is encrypted into the blockchain network. Because NFTs are works of art, works of music, videos, game items, etc. that are encrypted into the blockchain network, NFTs are often associated with copyright. The copyright is attached to the creator of the copyrighted work. Regarding this NFT, problems related to copyright can arise if the person who encrypts the work into the blockchain network is not the creator of the work and without the permission of the creator or copyright holder¹².

So far, the Ministry of Communication and Informatics (KOMINFO) has paid attention to the development of NFTs in Indonesia. In this case the Ministry of Communication and Informatics issued Press Release No.9/HM/KOMINFO/01/2022 on January 16, 2022 which regulates the Ministry of Communications and Informatics' Supervision of Non-Fungible Token (NFT) Transaction Activities in Indonesia, which regulates several matters, namely as follows

1. "Responding to the phenomenon of using Non-Fungible Token (NFT) technology which has become increasingly popular recently, the Ministry of Communication and Informatics reminds NFT transaction platforms to ensure that their platforms do not facilitate the dissemination of content that violates laws and regulations, whether in the form of violations of personal data protection provisions, to violations of intellectual property rights.
2. The Minister of Communication and Information has ordered related ranks at the Ministry of Communication and Information to oversee Non-Fungible Token (NFT) transaction activities that are running in Indonesia, as well as coordinate with the Commodity Futures Trading Regulatory Agency, Ministry of Trade (Bappebti) as the authorized institution in managing crypto asset trading.
3. UU no. 11 of 2008 concerning Information and Electronic Transactions and their amendments and implementing regulations, requires all PSE (Electronic System Operators) to ensure that their platforms are not used for actions that violate laws and regulations. Violation of existing obligations can be subject to administrative sanctions, including termination of platform access for users from Indonesia.
4. The Ministry of Communication and Informatics urges the public to be able to respond to trends in NFT transactions more wisely so that the economic potential of using NFTs does not have negative impacts or violate the law, and continue to improve digital literacy so that they are more proficient in using digital technology in a productive and conducive manner.
5. The Ministry of Communications and Informatics will take firm action by coordinating with CoFTRA, the Police, and other Ministries/Institutions to take legal action against 48 users of the NFT transaction platform who use it in violation of the law."

¹¹ Agus Yudha Hernoko, *Law of Contracts (Principle of Proportionality in Commercial Contracts)* (Jakarta: Kencana Prenada Media Group, 2010). p. 27.

¹² Nadia Imanda, 'Crypto Assets as Objects of Pawn Guarantee Institutions in Peer-To-Peer Lending Practices' (Airlangga University, 2020).

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Then, based on the provisions of Article 7 of the Copyright Law, it is explained that related to management information and electronic copyright information in Article 7 Paragraph (1) explains that Copyright management information

- a. includes information about: Methods or systems that can identify the originality of the substance of creation and its creator;
And
- b. Information code and access code.

As a legal system, intellectual property rights have not grown in the legal system in Indonesia since the beginning. Its presence has also complemented the conception of property rights in civil law in Indonesia. As is understandable, the notion of property rights known in civil law that has been in force until now basically depends on the concept of material things. In this case NFT can be interpreted as an intangible movable object and has protection under the Copyright Act. In addition, in terms of protecting intellectual property rights, in this case the copyright of a work, it is advisable to apply a policy that provides limitations in the process of the NFT transaction. So that if an NFT has been purchased by another person, he will have limited rights to the work, namely the prohibition to commercialize the work and make licences in his name. So, the owner of the work that purchased from the creator of the work will only be able to use, plagiarize, and publicly display. This makes the copyright of the work only to the creator of the work being traded as an NFT. So that "it is fitting for someone's work to be used as a digital asset such as an NFT to be protected as part of intellectual property rights and defined as an intangible movable object . " Regarding this NFT, problems related to copyright can arise if the person who encrypts the work into the blockchain network is not the owner. the creator of the work and without the permission of the creator or copyright holder.

So with the description above it can be seen that NFTs can be protected as Intellectual Property, even though it has not been specifically regulated, in principle NFTs as intellectual property objects can be protected.

2. Problems in the practice of Non-Fungible Tokens in Indonesia

In Indonesia itself there are no specific regulations that explicitly regulate CryptoArt or Non-Fungible Tokens (NFT) as objects of legal protection, but the rights of creators are generally protected by Law Number 28 of 2014 concerning Copyright (hereinafter referred to as UUHC). Considering that an NFT is born through a creative process (which is followed up by conversion/minting), then an NFT can be categorized as a work in accordance with the provisions of Article 1 point 3 of the UUHC which stipulates that a work is any copyrighted work in the fields of science, art and literature which is produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form ¹³.

In addition to regulatory issues with NFT transactions, there is the possibility of a seller selling a counterfeit or replica NFT digital asset that can harm the buyer. In terms of cybersecurity, sellers may be selling non-existent or fake NFTs. There are other possibilities related to cybersecurity where sellers impersonate other people to sell an NFT. Other non-fungible token (NFT) risks ¹⁴related to this are copyright theft, replicating popular or fake NFTs, and NFT giveaways. For example, the case of a crypto artist with the name Twisted Vacancy who claims to get elements of his NFT inspiration from the internet. These elements are collected into a draft of his work team which can later be used by him and other team members. However, upon closer examination, it was found that Twisted Vacancy took elements belonging to an Indonesian named Kendra Ahimsa that were circulating on the internet and then used these elements and modified them with new designs. With a design derived from elements of Kendra Ahimsa, Twisted Vacancy manages to sell its NFT pieces at incredible prices ¹⁵. In the cases of Kendra Ahimsa and Twisted Vacancy, it can be seen that NFT has the potential to cause cyberspace crimes in the form of copyright infringement. This problem requires special legal rules that regulate NFT as an aspect of life in improving the community's economy. Reflecting on this case, it is felt that the ITE Law and Copyright Law are not capable enough to specifically regulate NFT issues in the scope of art, so this can be called a legal vacuum. The impact of the absence of this law is that there is legal and regulatory uncertainty in society and has the potential to create new problems in the world of NFTs.

D. CONCLUSION

Non-Fungible Tokens are digital assets that can be authenticated to create digital ownership certificates which can be traded. NFT buyers have limited rights over the digital assets they buy. When someone has purchased an NFT from the creator of the digital asset, they gain ownership in the sense of belonging to them. However, the NFT holder has no other rights to the work.

NFT transactions themselves are electronic transactions which, if related to civil law, are known as anonymous agreements which must still refer to the provisions of the Civil Code, especially Article 1320 of the Civil Code. NFT in the civil aspect can be an object of trade as long as it does not conflict with the provisions of the Civil Code. Article 25 of Law Number 11 of 2008 concerning Information and Electronic Transactions which states that "electronic information and/or electronic documents that are

¹³ Ayyu Wulandari Ranti Fauza Mayana, Tisni Santika, Moch. Alvi Pratama, 'Intellectual Property Development & Commercialization of Non-Fungible Token (Nft): Opportunities, Challenges and Legal Problems in Practice', *Journal of Notary Law* , 5.2 (2022), 202–20.

¹⁴ Imanda.

¹⁵ Kevin Werbach Brian D Feinstein, 'The Impact of Cryptocurrency Regulation on Trading Markets', *Journal of Financial Regulation* , 7.1 (2021), 48–99 <<https://doi.org/https://doi.org/10.1093/jfr /fjab003>>.

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compiled into intellectual works, internet sites, and the intellectual works contained therein are protected as intellectual property rights under the provisions of laws and regulations. -invitation". So that this NFT can be protected as an intellectual property right because NFT is actually a work of art that is encrypted into the blockchain network. Because NFTs are works of art, works of music, videos, game items, etc. that are encrypted into the blockchain network, NFTs are often associated with copyrights.

So NFT should be an object protected by law, but problems arise as to what form of protection and who is entitled to protection in NFT transactions, because there is still an empty legal space here. On the other hand, in an NFT transaction, there is the possibility of a seller selling a counterfeit or replica NFT digital asset that can harm the buyer. In terms of cybersecurity, sellers may be selling non-existent or fake NFTs. There are other possibilities related to cybersecurity where sellers impersonate other people to sell an NFT.

cyberspace crimes in the form of copyright infringement. This problem requires special legal rules that regulate NFT as an aspect of life in improving the community's economy. Reflecting on this case, it is felt that the ITE Law and Copyright Law are not capable enough to specifically regulate NFT issues in the scope of art, so this can be called a legal vacuum. The impact of the absence of this law is that there is legal and regulatory uncertainty in society and has the potential to create new problems in the world of NFTs.

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